

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO**



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Natalie A. Jaresko
Executive Director

BY ELECTRONIC MAIL

April 6, 2020

The Honorable Wanda Vázquez Garced
Governor of Puerto Rico

Dear Governor Vázquez Garced:

We have become aware that the Government of Puerto Rico has entered into various agreements to purchase medical products, including rapid testing kits for COVID-19, for an approximate amount of \$40 million with a number of companies, including 313 LLC and Apex General Contractors. Specifically, we understand that the Government agreed to a purchase of COVID-19 rapid testing kits from Apex General Contractors for the amount of \$38 million. Based on press reports, we understand that the agreement was canceled since the shipment did not arrive on the agreed upon date, but not before the Government made an advance payment of \$19 million.

On March 16, 2020, Executive Order No. 2020-24 was issued to establish special emergency procurement procedures to acquire products and material that the Health Department declares necessary in connection with the prevention of COVID-19. The Executive Order requires that any contract executed in accordance with said Executive Order must be submitted to the Oversight Board on the date of execution.

On March 25, 2020, the Government also issued Executive Order No. 2020-27, which exempts the Executive Branch from the requirements of government contracting processes to enable and accelerate the recovery of Puerto Rico. Executive Order No. 2020-27 repealed and substituted Executive Order no. 2020-010 to include requirements that addressed some concerns the Oversight Board had presented.

As you know, the Oversight Board established and maintains a contract review policy pursuant to Section 204(b)(2) of PROMESA to require Oversight Board prior approval of certain contracts to assure that they “promote market competition” and “are not inconsistent with the approved fiscal plan” (the “Policy”). All government contracts and amendments thereto with an aggregate value of \$10 million or more are subject to Oversight Board prior approval pursuant to the Policy.

Despite all of the above, the Government did not submit the agreements to purchase the aforementioned rapid testing kits to the Oversight Board. The fact that the Oversight Board allowed the use of the emergency fund without prior approval, does not mean that purchases made in response to the emergency with those funds can be made without complying with the

Honorable Wanda Vázquez Garced

April 6, 2020

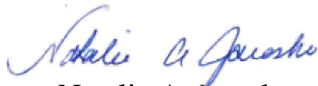
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corresponding due process consistent with fiscal governance, accountability, and internal controls. These elements of the procurement process are particularly critical during a state of emergency to ensure that critical resources are used efficiently and effectively. This state of emergency does not present grounds to disregard fiscal governance, accountability, and internal controls. Rather, it is especially during such times that the Government must continue to adhere to such principles to build and maintain confidence of all the stakeholders in the Commonwealth.

The agreements at issue appear to not comply with PROMESA and the processes by which they were procured do not appear consistent with internal controls, efficiency, and fiscal responsibility benchmarks that must guide the Government's procurement of products and services during the state of emergency. Entering into these agreements as above-described, without consideration of applicable processes or of basic procurement good practices, is unacceptable. Further, a legal analysis of the agreements in question may conclude that the same are null and void from inception. As such, these agreements should be canceled, provided they have not been already, and you should seek immediate reimbursement of all public funds disbursed in connection thereto. Please confirm, by April 8, 2020, that the Government has canceled these agreements and that the corresponding public funds have been reimbursed to the emergency fund.

The Oversight Board is committed, as you are, to enabling the Commonwealth to deal with the emergency from COVID-19 to protect all of the residents of Puerto Rico.

Sincerely,



Natalie A. Jaresko

CC: Omar Marrero Díaz